

IOLA D. LONG

IBLA 77-532

Decided October 18, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-11679-K.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Where the evidence of a postmark indicating that a rental payment was mailed after its due date is un rebutted, it must be held that reasonable diligence on the part of the lessee has not been shown.

APPEARANCES: Iola D. Long, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Iola D. Long appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), denying a petition for reinstatement of her oil and gas lease, U-11679-K, which expired by operation of law, 30 U.S.C. § 188 (1970), when the annual rental due on or before June 1, 1977, was not received by BLM until June 6, 1977.

In her petition for reinstatement to BLM Mrs. Long indicated she had forgotten the lease payment for 2 weeks and then had given the letter to someone else to post, admitting the letter might have been forgotten in their car. BLM, citing Louis Samuel, 8 IBLA 268 (1972), and Lynn Schusterman, 29 IBLA 182 (1977), held that forgetfulness, simple inadvertence and reliance on third party were not justifiable reasons for reinstatement.

On appeal Mrs. Long does not point to any errors in the BLM decision. She repeats that she wrote the check for the rental payment and gave it to her daughter-in-law to mail, but she does not specify any date she took such actions. She acknowledges that mail from her home on a rural route out of Amherst, Nebraska, to Salt Lake City, Utah, travels by a circuitous route.

We find that none of the reasons set forth in the appeal are sufficient to justify the failure to make timely payment of the rental here at issue.

[1, 2] An oil and gas lease, terminated by operation of law pursuant to section 1(7) of the Act of July 29, 1954, 30 U.S.C. § 188 (1970), can be reinstated only where the petitioner shows that the failure was either justifiable or not due to lack of reasonable diligence. 43 CFR 3108.2-1(c). In the case before us, the envelope in which the rental payment was received was postmarked: "Amherst, NE, June 2, 1977 PM." Nothing has been submitted to show the envelope containing the rental check was mailed prior to the time and date of the postmark. Mailing a rental payment after it is due cannot meet the reasonable diligence requirement of the statute, and simple inadvertence or forgetfulness by a lessee or her agent are not justifiable excuses for the delay. Cf. Milan de Lany, 22 IBLA 47 (1975); Lula Mai Martin, 27 IBLA 360 (1976). Since no exceptional circumstances are alleged here and since there appears no justifiable excuse for appellant's failure to exercise reasonable diligence, we affirm BLM's rejection of the petition for reinstatement of oil and gas lease U-11679-K.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

I concur:

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Anne Poindexter Lewis  
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur that appellant has not made a proper showing for reinstatement. The postmark of "June 2, 1977 PM," however, does not show the letter was mailed after the due date of June 1. While the letter was apparently posted at some point prior to the afternoon of June 2, appellant has not shown the letter was mailed sufficiently in advance of the due date for the mailing to be considered timely.

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Joseph W. Goss  
Administrative Judge

